

PLEASE TAKE NOTICE that, upon the accompanying supporting Memorandum of Law, the accompanying Declarations of Karen Langford, Joshua M. Rosenberg, Evvy Tavasci, AnaLisa Valle, and Howard Weitzman, Statement of Undisputed Material Facts, all exhibits attached thereto, and all pleadings, papers, and records on file in this action, Defendants and Counterclaimants John Branca and John McClain as Executors of the Estate of Michael J. Jackson (the “Executors”), by their undersigned counsel, will move this Court before the Honorable Paul A. Crotty of the United States District Court for the Southern District of New York, at Courtroom 14C of the United States Courthouse, 500 Pearl St., New York, New York 10007, on a date and at a time designated by the Court, for an Order: (1) granting the Executors’ motion for summary judgment or, in the alternative, summary adjudication, on all claims brought by Plaintiff Noval Williams Films LLC (“Plaintiff”) against the Executors, pursuant to Federal Rules of Civil Procedure 56; and (2) granting any such other and further relief as this Court deems just and proper.

The Executors’ motion is brought on the ground that there is no genuine issue as to any material fact and that the Executors are entitled to judgment as a matter of law for the following reasons:

Plaintiff has asserted two claims for declaratory relief against the Executors:

(1) declaratory relief that Plaintiff can freely exploit footage of Michael Jackson (the “Footage”) in the film, “Michael: The Last Photo Shoots” (the “Film”); and (2) “further relief” under 28 U.S.C. § 2202. Both claims fail as a matter of law and should be dismissed for the reasons set forth below.

First, Plaintiff cannot prove it has the right to exploit the Footage. Plaintiff was not the “author” of the Footage, and therefore Plaintiff must demonstrate it has the right to exploit the

Footage through its chain of title. Plaintiff alleges the initial owner of the Footage was H. Hasaun Muhammad ("Muhammad"). Yet Plaintiff has conceded it cannot authenticate the document purporting to transfer Muhammad's ownership of the Footage to Craig Williams (the director and producer of the Film), whose company later allegedly granted an exclusive license to Plaintiff to exploit the Footage. Nor can Plaintiff authenticate the one-page "work-for-hire" agreement that purportedly gave Muhammad ownership of the Footage in the first instance. Plaintiff also cannot rely on the statutory presumption of ownership because the copyright registration it relies upon was not filed within five years of first publication of the Footage. As such, Plaintiff cannot prove it has the right to exploit the Footage and its Claim No. 1 for declaratory relief should be dismissed.

Second, Plaintiff's claim for damages under the guise of "further relief" under 28 U.S.C. § 2202 fails as a matter of law. Plaintiff concedes that the only alleged act by the Executors that supposedly caused damage to Plaintiff was the Executors' transmission of pre-litigation letters in May and June of 2014 to Plaintiff and its sales agent for the Film, Lightning Entertainment ("Lightning"). The law is clear that these letters are protected by the litigation privilege and do not constitute "wrongful" conduct for a tortious interference claim (a claim Plaintiff did not plead in its Complaint but admitted in discovery is the sole basis for its damages claim). Furthermore, Plaintiff cannot prove the essential element of "causation" for its Section 2202 claim of tortious interference damages.

With no material fact in dispute, the Executors are entitled to summary judgment or, in the alternative, summary adjudication, in their favor on Plaintiff's claims.

Prior to the filing of this Motion, the Executors also complied with the Court's pre-motion conference procedures as set forth in its Individual Rules of Practice 3.A and D, and received the Court's permission to file this Motion. *See* Dkts. # 97-98.

PLEASE TAKE FURTHER NOTICE that pursuant to the parties' briefing schedule ordered by the Court, Plaintiff shall file and serve its Opposition to this motion on or before May 30, 2017, and the Executors shall file and serve their Reply on or before June 12, 2017.

PLEASE TAKE FURTHER NOTICE that oral argument is hereby requested.

Dated: April 28, 2017

Respectfully Submitted:

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP

By: 

Joshua M. Rosenberg (jrosenberg@kwikalaw.com)

(*pro hac vice*)

808 Wilshire Boulevard, 3rd Floor

Santa Monica, California 90401

Telephone: 310.566.9800

Facsimile: 310.566.9850

BLANK ROME LLP

Jerry D. Bernstein (JB7631) (jbernstein@BlankRome.com)

Rither Alabre (RA9280) (ralabre@BlankRome.com)

The Chrysler Building

405 Lexington Avenue

New York, New York 10174

Telephone: 212.885.5000

Facsimile: 917.332.3766

Attorneys for Defendants and Counterclaimants John Branca
and John McClain, Executors of the Estate of Michael J. Jackson